

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

JUL 16 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	EB Docket No. 02-149
)	
Publix Network Corporation; Customer	)	File No. EB-01-TC-052
Attendants, LLC; Revenue Controls	)	NAL/Acct. No. 200232170003
Corporation; SignTel, Inc.; and Focus Group,	)	FRN: 0004-3412-51
LLC)	
)	
Order to Show Cause and)	
Notice of Opportunity for Hearing)	

To: The Honorable Richard L. Sippel
Chief Administrative Law Judge

MOTION TO STAY PROCEEDING

1. The Enforcement Bureau ("Bureau"), pursuant to sections 1.41, 1.43, 1.44(e), 1.45(e), and 1.298 of the Commission's rules, hereby requests that the Presiding Judge suspend the procedural dates set forth in the orders released by the Presiding Judge in this proceeding on June 24 and June 28 2002, suspend the August 8, 2002 date for submission of the Bureau's Request for Admission of Facts and Genuineness of Documents, and suspend any future procedural dates until such time when the Department of Justice ("DOJ") advises the Bureau that the prosecution of this proceeding will no longer impair the prosecution of the criminal proceeding currently before the United States District Court for the State of Connecticut, Criminal No. 3:02CR55 (EBB). In support whereof, the following is shown:

2. On July 15, 2002, the Bureau received a letter from Assistant United States Attorney Shawn Chen ("AUSA Shawn Chen") requesting that the Federal Communications

No. of Copies rec'd 016
List ABCDE

Commission (“FCC”) issue a nine-month stay of this proceeding in the interests of justice.¹ The letter included a copy of the indictment of Dr. Raanan Liebermann (“Dr. Liebermann”) and Publix Network Corporation (“Publix”). Dr. Liebermann and Publix are principals in this administrative proceeding currently before the Presiding Judge.

3. As set forth in the letter from AUSA Shawn Chen, the issues in the aforementioned criminal proceeding are substantially similar to many of the issues present in this proceeding. A jury trial in the criminal proceeding is expected to occur in late 2002 or early 2003. DOJ is not requesting that the FCC forgo its administrative action, but to hold this proceeding in abeyance “in order to permit the orderly conclusion of the criminal prosecution.” Exhibit A at 2.

4. The reason given by the DOJ, with which the Bureau agrees, is that substantial governmental resources could be saved by suspending the procedural dates in this proceeding because this evidence gathered in the criminal proceeding will be made available to all of the administrative litigants. Further, based on the similarity of the issues in both proceedings, the resolution of legal and factual issues in the criminal proceeding may be dispositive of issues in this proceeding.

5. The DOJ also warns that a denial of this motion would cause “substantial prejudice to the criminal prosecution.” Exhibit A at 2. The reasons given are that Publix would be able to force witnesses to provide testimony in this proceeding that it could not otherwise obtain in the criminal proceeding, given the limited discovery rules for criminal procedure. Further, there is the possibility that forcing a litigant to defend both a civil and criminal proceeding concurrently may undermine that party’s Fifth Amendment privilege against self-

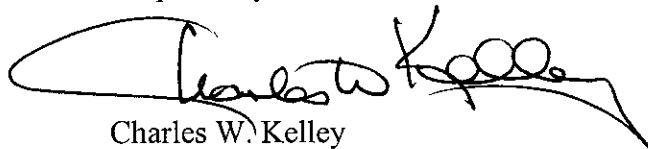
¹ A copy of the letter is attached as Exhibit A.

incrimination, expand the rights to criminal discovery for the prosecution, and possibly expose the basis of the litigant's defense prior to the criminal trial.

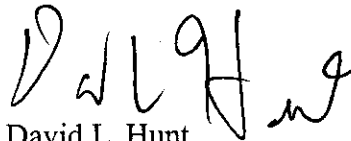
6. The DOJ contends that the equities weigh in favor of permitting the criminal prosecution to proceed unencumbered. The Bureau agrees with this assessment. If this motion to stay is granted, the Bureau will regularly update the Presiding Judge as to the status of the criminal proceeding.

7. The Bureau believes for the foregoing reasons and for the reasons set forth in Exhibit A that the procedural dates in this proceeding should be stayed until the Bureau is advised by the DOJ that prosecution of this proceeding will no longer impair the prosecution of the criminal proceeding. Consequently, the Bureau requests that the Presiding Judge stay all procedural dates in this proceeding as set forth above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles W. Kelley", written over a horizontal line.

Charles W. Kelley
Chief, Investigations and Hearings Division
Enforcement Bureau

A handwritten signature in black ink, appearing to read "David L. Hunt", written in a stylized, cursive manner.

David L. Hunt
Attorney

Federal Communications Commission
445 12th Street, S.W., Room 3-B443
Washington, D.C. 20554
(202) 418-1420

July 16, 2002

CERTIFICATE OF SERVICE

Harold Watson of the Enforcement Bureau's Investigations and Hearings Division certifies that he has on this 16th day of July, 2002, sent by the method indicated below, copies of the foregoing "Enforcement Bureau's Motion To Stay Proceeding" to:

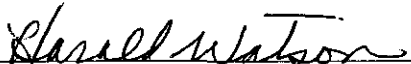
Dr. Raanan Liebermann (by mail)
Publix Network Corporation
79 Bayard Avenue
North Haven, CT 06473

Administrative Law Judge Richard L. Sippel (by hand)
Federal Communications Commission
445 12th Street, S.W., Room 1-C864
Washington, D.C. 20054

Courtesy copies were also sent to the following:

Gerard Waldron, Esquire (by mail and facsimile)
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C., 20004

Joseph Hutchinson, Esquire (by mail and facsimile)
Zeldas, Needle and Cooper
1000 Lafayette Blvd.
Suite 500
Bridgeport, CT 06601-1740



Harold Watson,
Investigations and Hearings Division
Enforcement Bureau



U.S. Department of Justice

United States Attorney
District of Connecticut

EXHIBIT A

Connecticut Financial Center
157 Church Street
P.O. Box 1824
New Haven, Connecticut 06510

(203) 821-3700

Fax (203) 773-3376

July 15, 2002

VIA TELECOPY AND FIRST-CLASS MAIL

Charles Kelley, Esq.
Chief, Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
Washington, D.C. 20554
Fax: (202) 418-4822

Re: In the Matter of Publix Network Corporation, et al.
FCC 02-173
EB Docket No. 02-149
File No. EB-01-TC-052

Dear Mr. Kelley:

I am writing on behalf of the United States Department of Justice -- U.S. Attorney's Office for the District of Connecticut. As you may be aware, this Office is currently involved in the criminal investigation and prosecution of Mr. Raanan Liebermann and Publix Network Corporation ("Publix"). On February 26, 2002, a federal grand jury in the District of Connecticut returned a two-count indictment against Liebermann and Publix for violations of the federal wire fraud statute, 18 U.S.C. § 1343.

The indictment alleges that the defendants were engaged in a scheme to defraud the Federal Communications Commission ("FCC"), the National Exchange Carrier Association, Inc. ("NECA"), and the Interstate Cost Recovery Plan (the "TRS Fund"), through the submission of materially false statements to the FCC and the submission of materially false and artificially inflated interstate TRS minutes of use to NECA. (A copy of the indictment is attached.) The criminal proceedings are presently at the discovery stage; and a jury trial in United States v. Raanan Liebermann and Publix Network Corp., Criminal No. 3:02CR55 (EBB), is anticipated for late 2002 or early 2003.

In addition to the criminal prosecution in the District of Connecticut, it is my understanding that the FCC has initiated an administrative proceeding against Publix and other related entities owned or controlled by Liebermann. Based on my review of the FCC Order to Show Cause released on June 19, 2002, it appears that there is substantial overlap between the

issues to be litigated in the criminal case and the administrative proceeding. Because prompt disposition of the criminal case will likely streamline discovery in the FCC matter -- and may well be dispositive of many of the allegations raised in the administrative proceeding -- this Office is writing to request that the FCC issue a nine-month stay of its administrative proceedings in the interests of justice.¹

The FCC is not being asked to forego its administrative claims, but merely to hold them in abeyance for approximately nine months in order to permit the orderly conclusion of the criminal prosecution. The FCC and respondents in that matter will have ample time to conduct discovery once the stay is lifted. In fact, a stay of the administrative proceedings will likely streamline later discovery because evidence gathered during the criminal case, including transcripts and trial exhibits, will be made available to the administrative litigants. Moreover, under the doctrines of res judicata or collateral estoppel, the resolution of legal and factual issues in the criminal case may well be dispositive of identical issues raised in the FCC Order to Show Cause. And if Liebermann and Publix should be convicted of the criminal charges, then the FCC, NECA and the TRS Fund would be entitled to mandatory restitution under 18 U.S.C. § 3663A, thereby obviating the need for the FCC to seek further redress in an administrative or civil forum.

By contrast, if the FCC were to deny a stay and permit the administrative litigants to engage in depositions or other discovery, this would cause substantial prejudice to the criminal prosecution. Publix would be able to force numerous witnesses to provide testimony and documents that it would otherwise not be entitled to obtain under the limited discovery rules for criminal procedure. See Twenty First Century Corp. v. LaBianca, 801 F. Supp. 1007, 1010 (E.D.N.Y. 1992) (granting Government's motion for stay of civil proceedings where civil discovery would afford defendants "an opportunity to gain evidence to which they are not entitled under the governing criminal discovery rules"); see also SEC v. Dresser Industries, Inc., 628 F.2d 1368, 1375-76 & n.20 (D.C. Cir. 1980) ("The strongest case for deferring civil proceedings until after completion of criminal proceedings is where a party under indictment for a serious offense is required to defend a civil or administrative action involving the same matter. The noncriminal proceeding, if not deferred, might undermine the party's Fifth Amendment privilege against self-incrimination, expand rights of criminal discovery beyond the limits of Federal Rule of Criminal Procedure 16(b), expose the basis of the defense to the prosecution in advance of criminal trial, or otherwise prejudice the case."); Campbell v. Eastland, 307 F.2d 478, 487 & n.12 (5th Cir. 1962) (giving "substantial weight" to public interest in law enforcement over private right to prompt determination of civil claims).

Because the equities in this matter weigh in favor of permitting the criminal prosecution to proceed unencumbered, this Office respectfully requests that the FCC stay its proceedings for a period of nine months.

¹ I have discussed this matter with Joseph Hutchison, Esq., and Shelley Sadin, Esq., who are counsel for Liebermann in the criminal case. Attorneys Hutchison and Sadin have indicated that they do not object to a stay; however, it is unclear whether that position is similarly held by Gerard Waldron, Esq., counsel for Publix in the administrative proceedings.

If you should have any questions, please feel free to contact me at (203) 821-3738.

Very truly yours,

JOHN A. DANAHER III
UNITED STATES ATTORNEY

SHAWN J. CHEN
ASSISTANT U.S. ATTORNEY

cc: Joseph Hutchison, Esq., Counsel for Liebermann

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

v. :

RAANAN LIEBERMANN, and :
PUBLIX NETWORK CORPORATION :

FEB 26 5 10 PM '02
CRIMINAL NO.

NEW HAVEN, CT

3:02CR55 (EAB)

18 U.S.C. § 1343 [wire fraud]

18 U.S.C. § 2 [aiding and abetting]

INDICTMENT

The Grand Jury charges that:

COUNT ONE

I. General Allegations

1. At all times relevant to this Indictment, the defendant **PUBLIX NETWORK CORPORATION** (hereinafter "**PUBLIX**") was a Delaware corporation with a business address of 79 Bayard Avenue, North Haven, Connecticut.
2. At all times relevant to this Indictment, the defendant **RAANAN LIEBERMANN** was the controlling shareholder and principal executive officer of **PUBLIX**.
3. At all times relevant to this Indictment, Revenue Controls Corporation ("**RCC**") was a Delaware corporation with a business address of 79 Bayard Avenue, North Haven, Connecticut. At all times relevant to this Indictment, the defendant **RAANAN LIEBERMANN** was the controlling shareholder of **RCC**.
4. From in or about March 2000 and continuing thereafter, Signtel, Inc. ("**Signtel**") was a Delaware corporation with a business address of 79 Bayard Avenue, North Haven, Connecticut. From in or about March 2000 and continuing thereafter, the defendant **RAANAN LIEBERMANN** was the controlling shareholder and principal executive

07/13/02 17:08 FAX 206 475 8875

officer of Signtel.

5. From in or about March 2001 and continuing thereafter, Focus Group LLC ("Focus Group") was a limited liability company registered in Connecticut. Focus Group LLC was functionally a division of Signtel.
6. At all times relevant to this Indictment, the Federal Communications Commission ("FCC") was an agency of the executive branch of the Government of the United States. Among the functions of the FCC is to ensure that interstate telecommunications relay services ("TRS") are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.
7. TRS provides the ability, among other things, for an individual who has a hearing or speech disability to engage in communication by telephone with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by telephone.
8. At all times relevant to this Indictment, a standard method of providing TRS was for the TRS provider to employ a relay operator (also known as a communications assistant or "CA") to transliterate or interpret conversation between two end users of TRS. The end user who has a hearing or speech disability uses a text telephone (also known as a "TTY" or "TDD" machine) to transmit communications to the CA. The CA then speaks the text as typed by the person with the hearing or speech disability to the other end user. In response, the other end user speaks to the CA, and the CA types the response back to the person with the hearing or speech disability.
9. Pursuant to its statutory authority, the FCC established an Interstate Cost Recovery Plan

- 07/18/02 1:00 PM 2007-11-15
- (also known as the TRS Fund) to recover or subsidize the costs of providing interstate TRS. To be eligible for receiving payments from the TRS Fund, a TRS provider must meet a number of mandatory minimum operational, technical, and functional standards.
10. At all times relevant to this Indictment, the National Exchange Carrier Association, Inc. (hereinafter "NECA") was a not-for-profit organization appointed by the FCC to administer the TRS Fund. TRS Fund payments are distributed to each TRS provider based on its total monthly interstate TRS minutes of use -- that is, the time spent by each CA providing TRS on an interstate telephone call. All TRS providers are required to submit reports of interstate TRS minutes of use to NECA in order to receive payment.

II. Scheme and Artifice to Defraud

11. Beginning on a date unknown, although no later than in or about April 1998, and continuing thereafter, in the District of Connecticut, the defendants **RAANAN LIEBERMANN** and **PUBLIX NETWORK CORPORATION** knowingly and willfully devised a scheme and artifice to defraud the FCC, NECA, and the TRS Fund by submitting materially false and artificially inflated interstate TRS minutes of use to NECA for payment from the TRS Fund.
12. As part of their scheme to defraud, on or about April 6, 1998, **LIEBERMANN** and **PUBLIX** filed an Application for Interstate TRS Facility Certification with the FCC. In that Application, **LIEBERMANN** and **PUBLIX** falsely represented that **PUBLIX** met all of the FCC's operational, technical, and functional minimum standards. In fact, however, **PUBLIX** did not meet all of the FCC's mandatory minimum operational, technical, and functional standards.
13. After receiving certification from the FCC, from in or about January 1999 through in or

about March 2001, **LIEBERMANN** and **PUBLIX** submitted monthly interstate TRS minutes of use to NECA. As part of their scheme to defraud, **LIEBERMANN** and **PUBLIX** knowingly and willfully submitted interstate TRS minutes of use to NECA that were materially false and artificially inflated.

14. In particular, as part of their scheme to defraud, **LIEBERMANN** placed interstate TRS calls through **PUBLIX** to his own employees at RCC, Signtel, and Focus Group. Those calls generated interstate TRS minutes of use for **PUBLIX** to submit to NECA. In addition, as part of their scheme to defraud, **LIEBERMANN** caused his employees at **PUBLIX**, RCC, Signtel, and Focus Group to place interstate TRS calls through **PUBLIX** to one another. Those calls also generated interstate TRS minutes of use for **PUBLIX** to submit to NECA. None of the above calls had any legitimate purpose. In this manner, **LIEBERMANN** and **PUBLIX** knowingly and willfully submitted a material number of interstate TRS minutes of use to NECA that were artificially generated by having one employee of a **LIEBERMANN**-controlled entity place interstate TRS calls to other employees of a **LIEBERMANN**-controlled entity.
15. In addition, as part of their scheme to defraud, **LIEBERMANN** wrote and caused others to write various "scripts," which were distributed to employees of **PUBLIX**, RCC, and Signtel. **LIEBERMANN** then read and caused others to read those "scripts" as part of the interstate TRS calls described in Paragraph 14 above.
16. In addition, as part of their scheme to defraud, **LIEBERMANN** engaged and caused others to engage in a practice known as "dotting" during the interstate TRS calls described in Paragraph 14 above. "Dotting" occurs when participants in a TRS call have no meaningful communication, but simply strike the "period" or "dot" key on their text

07/15/02 17:50 FAX 202 775 6045

telephones on a regular basis in order to prevent the call from being disconnected. In this manner, **LIEBERMANN** and **PUBLIX** knowingly and willfully submitted a material number of interstate TRS minutes of use to NECA that were artificially generated by "dotting" during interstate TRS calls.

17. As a result of the interstate TRS calls described in Paragraphs 14 through 16 above, **LIEBERMANN** and **PUBLIX** artificially generated over 6.4 million interstate TRS minutes of use that were submitted to NECA for recovery or subsidization from the TRS Fund. As a result, from January 1999 through March 2001, **LIEBERMANN** and **PUBLIX** knowingly and willfully defrauded over \$7.9 million from NECA and the TRS Fund.

III. Use of the Wires

18. On or about November 4, 1999, in the District of Connecticut, the defendants **RAANAN LIEBERMANN** and **PUBLIX NETWORK CORPORATION**, having devised a scheme and artifice to defraud as described in Paragraphs 1 through 17 above, for the purpose of executing and in order to effect said scheme and artifice to defraud, did knowingly transmit and caused to be transmitted by means of wire and radio communication in interstate commerce from Connecticut to Pennsylvania, certain writings, signs, signals, pictures, and sounds, to wit, a radio and wire communication of 4 hours, 0 minutes, and 11 seconds in duration.

All in violation of Title 18, United States Code, Sections 1343 and 2.

COUNT TWO

19. The allegations contained in Paragraphs 1 through 17 of this Indictment are hereby

realleged and incorporated by reference as though fully set forth herein.

20. On or about February 2, 2001, in the District of Connecticut, the defendants **RAANAN LIEBERMANN** and **PUBLIX NETWORK CORPORATION**, having devised a scheme and artifice to defraud as described in Paragraphs 1 through 17 above, for the purpose of executing and in order to effect said scheme and artifice to defraud, did knowingly transmit and caused to be transmitted by means of wire and radio communication in interstate commerce from Connecticut to California, certain writings, signs, signals, pictures, and sounds, to wit, a radio and wire communication of 3 hours, 59 minutes, and 37 seconds in duration.

All in violation of Title 18, United States Code, Sections 1343 and 2.

A TRUE BILL

John Fischel
FOREPERSON *2/21/2002*

JOHN A. DANAHER III
UNITED STATES ATTORNEY

James I. Glasser
JAMES I. GLASSER
CHIEF, CRIMINAL DIVISION

Shawn J. Chen
SHAWN J. CHEN
ASSISTANT UNITED STATES ATTORNEY

I hereby certify that the foregoing
is a true copy of the original document
on file. Date: _____

KEVIN F. ROWE
Clerk

By _____
Deputy Clerk

Before the
Federal Communications Commission
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of	)	EB Docket No. 02-21
)	
Peninsula Communications, Inc.)	
	)	File No. EB 01-IH-0609
Licensee of stations	)	FRN: 0001-5712-15
KGTL, Homer, Alaska;	)	Facility ID Nos. 52152
KXBA(FM), Nikiski, Alaska;	)	86717
KWVV-FM, Homer, Alaska; and	)	52145
KPEN-FM, Soldotna, Alaska.	)	52149
)	
Licensee of FM translator stations)	
K292ED, Kachemak City, Alaska;	)	52150
K285DU, Homer, Alaska;	)	52157
K285EG and K272DG, Seward, Alaska	)	52158 and 52160
)	
Former licensee of FM translator stations)	
K285EF, Kenai, Alaska;)	
K283AB, Kenai/Soldotna, Alaska;)	
K257DB, Anchor Point, Alaska;)	
K265CK, Kachemak City, Alaska;)	
K272CN, Homer, Alaska; and)	
K274AB and K285AA, Kodiak, Alaska)	

RECEIVED

JUL 16 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Peninsula Communications, Inc.

SUPPLEMENT TO ENFORCEMENT BUREAU'S
NOTICE OF DEPOSITION UPON ORAL EXAMINATION

On June 13, 2002, the Enforcement Bureau, pursuant to section 1.315 of the Commission's rules, 47 C.F.R. § 1.315, gave notice that it intended to take the deposition upon oral examination of John C. Davis, 48590 KSRM Court, Kenai, Alaska 99611. The Bureau hereby corrects that notice by changing the location for the deposition to: 40960 K-Beach Road, Kenai, AK 99611. The new address is the business address and offices of

No. of Copies rec'd 013
List ABCDE

KSRM, Inc. In all other respects, the notice remains unchanged.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles W. Kelley". The signature is fluid and cursive, with the first name "Charles" being more prominent.

Charles W. Kelley
Chief, Investigations and Hearings Division

A handwritten signature in black ink, appearing to read "James W. Shook". The signature is cursive and somewhat stylized.

James W. Shook
Attorney

A handwritten signature in black ink, appearing to read "Judy Lancaster". The signature is cursive and includes a small mark at the end that looks like "for".

Judy Lancaster
Attorney

Federal Communications Commission
445 12th Street, S.W., Room 3-B443
Washington, D.C. 20554
(202) 418-1420

July 16, 2002

Certificate of Service

James W. Shook, an attorney in the Enforcement Bureau's Investigations and Hearings Division, certifies that he has on this 16th day of July, 2002, sent by facsimile, by first class United States mail, or delivered by hand, one copy of the foregoing "Enforcement Bureau's Notice of Deposition Upon Oral Examination" to each of the following:

Jeffrey D. Southmayd, Esquire (by facsimile and by first class mail)
Southmayd & Miller
1220 19th Street, N.W., Suite 400
Washington, D.C. 20036

Administrative Law Judge Richard L. Sippel (by hand)
Federal Communications Commission
445 12th Street, S.W., Room 1-C749
Washington, D.C. 20554

John C. Davis, President
KSRM, Inc.
48590 KSRM Court
Kenai, Alaska 99611

Peter Gutmann, Esquire
Womble, Carlyle, Sandridge & Rice, P. L.L.C.
1401 Eye Street, N.W. Suite 700
Washington, D.C. 20005



James W. Shook